

United States
1073
Circuit Court of Appeals

For the Ninth Circuit.

PUGET SOUND TRACTION, LIGHT & POWER
COMPANY, a Corporation,

Plaintiff in Error,

vs.

ANNA F. FRESCOLN,

Defendant in Error.

Transcript of Record.


Upon Writ of Error to the United States District Court of
the Western District of Washington, Northern Division.

Filed

DEC 18 1916

F. D. Monckton,

Clerk.



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[Clerk's Note: When deemed likely to be of an important nature, errors or doubtful matters appearing in the original certified record are printed literally in italic; and, likewise, cancelled matter appearing in the original certified record is printed and cancelled herein accordingly. When possible, an omission from the text is indicated by printing in italic the two words between which the omission seems to occur.]

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Names and Addresses of Counsel.

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and Plaintiff in Error,

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Plaintiff in Error,

Electric Building, Seattle, Washington.

THOMAS H. BAIN, Esq., Attorney for Plaintiff and
Defendant in Error,

448 New York Block, Seattle, Washington.

[1*]

*In the Superior Court of the State of Washington,
in and for the County of King.*

No. 3033.

ANNA F. FRESCOLN,

Plaintiff,

vs.

THE PUGET SOUND TRACTION, LIGHT &
POWER COMPANY, a Corporation,

Defendant.

Complaint.

The plaintiff complains of the defendant and for
cause of action alleges:

I.

That the plaintiff Anna F. Frescoln is the widow
of J. W. Frescoln, deceased; that said plaintiff and
said deceased intermarried on the 18th day of Jan-
uary, 1880.

*Page-number appearing at foot of page of original certified Tran-
script of Record.

II.

That the defendant is a corporation, duly organized and existing under and by virtue of the laws of the State of Massachusetts, with its principal place of business in the City of Seattle, King County, Washington, and has been such during all the times referred to in this complaint.

III.

That at all times referred to herein, defendant was the owner of and was operating and maintaining a certain electric street railway line over and on Queen Anne Avenue, a public street within the corporate limits of the City of Seattle, King County, State of Washington, under and by virtue of a certain franchise granted to defendant or its predecessors by the said City of Seattle, and that said electric street railway was a common carrier of passengers for hire.

[2]

IV.

That on or about the 22d day of November, 1913, while said J. W. Frescoln, deceased, was a passenger on one of defendant's passenger cars, then being regularly operated by said defendant company on its said electric street railway line on said Queen Anne Avenue near the Mercer Street crossing, the defendant operated said car in such a careless, reckless and negligent manner that the said J. W. Frescoln, deceased, was, without warning, suddenly and violently thrown from the steps and through the open gates of said car to the paved street, striking upon the left side of his head, receiving a severe cut, bruise and laceration of the head and face, spraining and

wrenching the cords, ligaments and muscles of his neck and body and severely jarring his whole body, rendering him for a time wholly unconscious, whereby he become sick, causing vomiting and was made sore and lame and was confined to his bed a considerable time and suffered great bodily pain, and the said J. W. Frescoln, now deceased, was so crushed, bruised and injured by being so thrown from said car that he died from the effects thereof on the 15th day of September, 1914, in said county; that said fall, injuries and death of said J. W. Frescoln, deceased, were caused wholly by the fault, negligence and carelessness of the defendant, its agents and employees in the management and operation of said car and of said road.

V.

That said J. W. Frescoln, deceased, was at the time of his death at the age of fifty-eight years; was sound and vigorous in body and mind; a kind and affectionate husband; that he left him surviving as his heir, his widow, Anna F. Frescoln, the plaintiff herein, who was at the time of his death entirely dependent upon him for her support and maintenance; that said deceased was at the [3] time of his death a resident of the city of Seattle, Washington, and by profession a minister of the gospel and in good and regular standing in the Puget Sound Conference of the Methodist Episcopal Church, and capable of earning the sum of eighteen hundred dollars per year in the discharge of his duties as such minister. That at the time of his death and for many years prior thereto, he had been and was providing

liberally for the maintenance and support of his family, was a kind and indulgent husband, and by his said death his widow has been deprived of his affection, companionship and support to her damage in the sum of twenty-five thousand (\$25,000) dollars.

WHEREFORE, plaintiff prays for judgment against defendant for the sum of twenty-five thousand (\$25,000) dollars and for costs of this action.

THOS. H. BAIN,
Attorney for Plaintiff.

State of Washington,
County of King,—ss.

Anna F. Frescoln, being first duly sworn, says: That she is the plaintiff in the above-entitled action; that she has read the foregoing complaint, knows the contents thereof and believes the same to be true.

ANNA F. FRESCOLN.

Subscribed and sworn to before me this 15th day of April, A. D. 1915.

THOS. H. BAIN,
Notary Public in and for the State of Washington,
Residing at Seattle. [4]

State of Washington,
County of King,—ss.

Anna F. Frescoln, being first duly sworn, on oath says: That she is the plaintiff in the above-entitled action; that she has read the foregoing complaint, knows the contents thereof and believes the same to be true.

Subscribed and sworn to before me this — day
of April, 1915.

THOS. H. BAIN,
Notary Public in and for the State of Washington,
Residing at Seattle.

Copy of within Summons and Complaint received
and due service of same acknowledged this — day
of April, 1915.

Attorney for ———.

Filed in clerk's office, May 11, 1915. W. K. Sick-
els, Clerk. By F. W. Smith, Deputy.

[Indorsed]: Complaint. Filed in the U. S. Dis-
trict Court, Western District of Washington, North-
ern Division. June 7, 1915. Frank L. Crosby,
Clerk. By E. M. L., Deputy. [5]

*In the District Court of the United States for the
Western District of Washington, Northern Di-
vision.*

No. 3033.

ANNA F. FRESCOLN,

Plaintiff,

vs.

PUGET SOUND TRACTION, LIGHT & POWER
COMPANY, a Corporation,

Defendant.

Answer.

Comes now the defendant above named and for an-
swer to the complaint of the plaintiff herein shows:

I.

For answer to the first paragraph of the complaint the defendant admits the same.

II.

For answer to the second paragraph of the complaint the defendant admits the same.

III.

For answer to the third paragraph of the complaint the defendant admits the same.

IV.

For answer to the fourth paragraph of the complaint the defendant admits that on or about the 22d day of November, 1913, J. W. Frescoln, deceased, was a passenger upon one of defendant's cars operated on Queen Anne Avenue near the Mercer Street crossing; but the defendant denies each and every other allegation in said paragraph IV contained.

V.

For answer to the fifth paragraph of the complaint [6] the defendant denies the same.

For a first special and affirmative defense the defendant alleges:

I.

That the injuries, if any, received by said J. W. Frescoln. were caused and contributed to by his own careless and negligent acts.

For a second affirmative defense, and as a plea in bar to the right of the plaintiff to maintain this present action, the defendant shows:

I.

That heretofore, to wit, on the 22d day of January, 1914, J. W. Frescoln commenced an action in the

Superior Court of the State of Washington for King County, against the defendant, which said action was founded upon the same cause of action upon which the present complaint of Anna F. Frescoln is founded.

II.

That thereafter and in due course, the defendant answered the said complaint. and thereafter the said J. W. Frescoln replied to said answer. That a copy of said original complaint, the answer thereto, and the reply are hereunto attached and marked respectively Defendant's Exhibits "A," "B," and "C," and are made a part of this answer as though fully set forth herein.

III.

That said cause was set regularly for trial in said Superior Court of the State of Washington for the 13th day of October, 1914, but that prior to the time of the hearing of said cause, to wit, on the 15th day of September, 1914, J. W. Frescoln [7] died; that thereafter, on, to wit, the 17th day of November, 1914, the plaintiff, Anna F. Frescoln, filed an application with the Superior Court for King County, Washington, that she be allowed to substitute herself in her own right and also herself as the administratrix of said J. W. Frescoln, deceased, and that thereafter on the 27th day of November, 1914, the said Superior Court of the State of Washington for King County signed an order granting the prayer in said petition and allowing the plaintiff herein to be substituted in her own right and as the administra-

trix of the said J. W. Frescoln, deceased, as the plaintiff in said original action.

IV.

That on the 7th day of December, 1914, the said Anna Frescoln, individually and as administratrix, as aforesaid, filed and served a supplemental complaint, setting forth in addition to the matters set forth in the original complaint the death of said J. W. Frescoln and the expenses incident thereto.

V.

That on the 2d day of January, 1915, the defendant herein served and filed its answer; that a copy of said supplemental complaint and the answer thereto are hereto attached and marked respectively Defendant's Exhibits "D" and "E" and made a part hereof as though fully set forth herein.

VI.

That thereafter and on the 16th day of March, 1915, the said cause came on for trial upon the original complaint and upon the supplemental complaint, and upon the answer thereto, and upon the reply to the original answer, before a jury in Department No. 6 of the Superior Court of the State of Washington, Honorable King Dykeman, Judge; and that thereafter, upon the 18th day of March, 1915, the jury returned a verdict for the plaintiff in the [8] sum of twenty-five hundred and fifty dollars (\$2,550).

VII.

That upon the same day, and before the verdict of the jury was entered, the defendant herein filed a motion for judgment *non obstante veredicto*, which motion was thereafter argued before said Court and

that on the 5th day of April, 1915, the said Court granted said motion and granted said judgment and entered a judgment for defendant in said cause, the verdict of the jury notwithstanding. That a copy of said judgment of the Court is hereto attached and marked Defendant's Exhibit "F" and made a part hereof as though fully set forth herein.

VIII.

That all of the matters set forth in the complaint in this present cause were fully set forth and litigated in the trial of said cause in the Superior Court of King County, and that the judgment of said Court made on the 5th day of April, 1915, was given as the final judgment and is conclusive of all matters and causes claimed in the plaintiff's complaint herein.

IX.

That the plaintiff in said cause in the Superior Court of King County has appealed from the judgment of said court to the Supreme Court of the State of Washington.

WHEREFORE, in consideration of the premises the defendant prays that the plaintiff may not have and maintain her said action against this defendant, and defendant further prays that no trial of this present cause be had until such time as the original cause has been decided by the Supreme Court of the State of Washington.

JAMES B. HOWE,
H. S. ELLIOTT,

Attorneys for Defendant. [9]

State of Washington,
County of King,—ss.

D. W. Henderson, being first duly sworn, on oath deposes and says: That he is the superintendent of transportation of the Puget Sound Traction, Light & Power Company, a corporation, defendant in the within-entitled action; that he has read the foregoing Answer, knows the contents thereof and believes the same to be true. That he makes this verification because said defendant is a corporation and affiant is its superintendent of transportation.

D. W. HENDERSON.

Subscribed and sworn to before me this 7th day of July, 1915.

[Seal]

R. E. SHARPE,
Notary Public in and for the State of Washington,
Residing at Seattle. [10]

**Defendant's Exhibit "A" to Answer—Complaint in
Frescoln vs. P. S. T., L. & P. Co., in Superior
Court.**

*In the Superior Court of the State of Washington,
in and for the County of King.*

No.—.

J. W. FRESCOLN,

Plaintiff,

vs.

THE PUGET SOUND TRACTION, LIGHT &
POWER COMPANY, a Corporation,
Defendant.

The plaintiff complains of the defendant and for cause of action alleges:

I.

That the defendant is a corporation, duly organized and existing under and by virtue of the laws of the State of Massachusetts, with its principal place of business in the City of Seattle, King County, Washington, and has been such during all the times referred to in this complaint.

II.

That at all times referred to herein, defendant was the owner of and was operating and maintaining a certain electric street railway line over and on Queen Anne Avenue, a public street within the corporate limits of the City of Seattle, King County, State of Washington, under and by virtue of a certain franchise granted to defendant or its predecessors by the said City of Seattle and that said electric street railway was a common carrier of passengers for hire.

III.

That on or about the 22d day of November, 1913, while plaintiff was a passenger on one of defendant's passenger cars, then being regularly operated by said defendant company, on its said electric street railway line on said [11] Queen Anne Avenue near the Mercer Street crossing. The defendant operated said car in such a careless, reckless and negligent manner that the plaintiff was without warning, suddenly and violently thrown from the steps and thru the open gates of said car to the paved street, striking upon the left side of his head, receiving a severe cut, bruise, and laceration of the

head and face, straining the cords, ligaments and muscles of his neck and body and severely jarring his whole body, rendering him for a time, wholly unconscious, whereby plaintiff became severely sick, causing vomiting, sore and lame, and was confined to his bed and suffered great bodily pains, mental anguish, weakness and loss of memory, leaving his left eye blackened and bloodshot, greatly affecting its sight, and he was compelled to employ a doctor and surgeon, to dress and sew up said cut on his head and give him general attendance and treatment, and the said injuries are permanent.

IV.

That by reason of the pain and suffering which plaintiff was compelled to endure and which he still endures and which he will be compelled to suffer, he has been damaged in the sum of five thousand (5,000) dollars; that he has been compelled to expend to the present time for attendance of a doctor and surgeon, the sum of forty (40) dollars; for the services of a nurse the sum of fifty (50) dollars; for drugs and medicines eighty (80) dollars; and for the loss of time, two hundred and twenty-five (225) dollars.

V.

That previous to the injuries herein referred to, plaintiff was and is now a minister of the gospel and pastor of a church in the city of Seattle and capable of earning a salary of one hundred and fifty (150) dollars per month, [12] and that by reason of said injuries could not fill his pulpit or discharge the

duties of a pastor for six weeks from the date of said injury.

VI.

That on account of the personal injuries aforesaid, the physical pain, mental anguish, expenditures incurred for doctor and surgeon, for drugs and medicines and nurse hire up to the present time and for the pain and suffering on account of said injuries, plaintiff has been damaged in the sum of five thousand three hundred and twenty-three dollars (\$5,323), no part of which has been paid.

WHEREFORE, plaintiff prays for judgment against defendant for the sum of five thousand three hundred and twenty-three (5,323) dollars and for costs and disbursements herein incurred.

THOS. H. BAIN,
Attorney for Plaintiff.

State of Washington,
County of King,—ss.

J. W. Frescoln, being first duly sworn, says: That he is the plaintiff in the above-entitled action; that he has read the foregoing complaint, knows the contents thereof and believes the same to be true.

J. W. FRESCOLN.

Subscribed and sworn to before me this 21st day of January, A. D. 1914.

THOS. H. BAIN,
Notary Public in and for the State of Washington,
Residing at Seattle. [13]

**Defendant's Exhibit "B" to Answer—Answer in
Frescoln vs. P. S. T. L. & P. Co. in Superior
Court.**

*In the Superior Court of the State of Washington
for King County.*

No. —.

J. W. FRESCOLN,

Plaintiff,

vs.

PUGET SOUND TRACTION, LIGHT & POWER
COMPANY, a Corporation,

Defendant.

Comes now the defendant, and, for answer to the
complaint of the plaintiff herein, shows

I.

For answer to the third paragraph of the com-
plaint, the defendant denies the same.

II.

For answer to the fourth paragraph of the com-
plaint, the defendant denies the same, and especially
denies that the plaintiff has been damaged in the
sum of five thousand dollars (\$5,000), or in any
other sum, or at all. Further, it especially denies
that the plaintiff has been compelled to expend the
sum of forty dollars (\$40) for attendance of a sur-
geon and doctor; especially denies that he expended
the sum of fifty dollars (\$50) for a nurse; especially
denies that he expended the sum of eighty dollars
(\$80) for medicines; and further, especially denies

that plaintiff has suffered loss of time to the value of two hundred and twenty-five dollars (\$225).

III.

For answer to the fifth paragraph of the complaint, the defendant has no knowledge or information sufficient to form a belief and therefore denies the same. [14]

IV.

For answer to the sixth paragraph of the complaint, the defendant denies the same, and especially denies that the plaintiff has been damaged in the sum of five thousand three hundred and twenty-three dollars (\$5,323), or in any other sum, or at all.

For a further answer and affirmative defense to plaintiff's complaint, this defendant alleges: That whatever injuries, if any, plaintiff received were caused and contributed to by his own careless acts and negligence.

WHEREFORE, Defendant prays that it may go hence with its costs.

JAMES B. HOWE,

H. S. ELLIOTT,

Attorneys for Defendant. [15]

State of Washington,

County of King,—ss.

G. A. Richardson, being first duly sworn, on oath deposes and says: That he is the supt. of railways of the Puget Sound Traction, Light & Power Company, a corporation, defendant in the above-entitled action; that he has read the foregoing Answer, knows the contents thereof and believes the same to be true.

That he makes this verification because defendant is a corporation and affiant is its supt. of railways.

G. A. RICHARDSON,

Subscribed and sworn to before me this 11th day of February, 1914.

R. G. SHARPE,

Notary Public in and for the State of Washington,
Residing at Seattle. [16]

**Defendant's Exhibit "C" to Answer—Reply in
Frescoln vs. P. S. T. L. & P. Co. in Superior
Court.**

*In the Superior Court of the State of Washington
for King County.*

No. —.

J. W. FRESCOLN,

Plaintiff,

PUGET SOUND TRACTION, LIGHT & POWER
COMPANY, a Corporation,

Defendant.

Comes now the plaintiff herein and for reply to the affirmative defense set forth in the answer of defendant, plaintiff denies the same.

WHEREFORE, Plaintiff prays for a judgment as demanded in his complaint.

THOS. H. BAIN,

Attorney for Plaintiff. [17]

**Defendant's Exhibit "D" to Answer—Supplemental
Complaint in Frescoln vs. P. S. T. L. & P. Co. in
Superior Court.**

*In the Superior Court of the State of Washington
in and for the County of King.*

No. 99,677.

ANNA F. FRESCOLN, Individually and as the Ad-
ministratrix of the Estate of J. W. FRES-
COLN, Deceased,

Plaintiff,

vs.

THE PUGET SOUND TRACTION, LIGHT &
POWER COMPANY, a Corporation,

Defendant.

The plaintiff further complains of the above-
named defendant and alleges:

I.

That on the 15th day of September, 1914, the
original plaintiff in this action, J. A. Frescoln, died
at his home in the city of Seattle, King County,
Washington.

II.

That continuously after receiving the injuries as
alleged in the original complaint herein, and up to
the time of his death, the said J. W. Frescoln suf-
fered great bodily pain and mental disturbance,
and great loss of sleep and severe nervous exhaus-
tion and nervous attacks, demanding frequent calls
and treatment of his physician and nursing and care

by his wife and friends. That he grew weaker and weaker and said nervous attacks became more frequent and severe until the date of his death.

III.

That by reason of the pain and suffering which said J. W. Frescoln was compelled to endure from the time of receiving said injuries up to the time of his death, he was damaged in the [18] sum of twenty thousand (\$20,000) dollars; that he was compelled to have the care and attendance of a physician and surgeon at an expense of \$55 and for service of a nurse in the sum of \$50; for drugs and medicine eight dollars, for all of which he agreed to pay; and for the loss of time to the value of \$500.

IV.

That by reason of his physical and mental suffering his loss of sleep, his nervous attacks, loss of bodily and mental health, loss of wages and earning power, his obligation to pay for medicines and medical attendance and the attendance of a physician and his subsequent death, together with all other damages alleged heretofore in the complaint, were caused and occasioned solely by reason of the fault, negligence, carelessness and recklessness of the defendant, its agents and servants, all as alleged in the complaint filed in this action.

V.

That the plaintiff, Anna F. Frescoln is the widow of said J. W. Frescoln, deceased, and that this plaintiff, Anna F. Frescoln is the duly appointed, qualified and acting administratrix of the estate of said J. W. Frescoln, deceased.

VI.

That the plaintiff is continuing and prosecuting this action for the joint benefit of herself and the estate of said deceased, J. W. Frescoln, as the widow and administratrix respectively of said deceased.

WHEREFORE, this plaintiff prays judgment against said defendant in the sum of twenty thousand six hundred and thirteen (\$20,613) dollars and for all proper costs incurred herein.

THOS. H. BAIN,
Attorney for Plaintiff. [19]

State of Washington,
County of King,—ss.

Anna F. Frescoln, being first duly sworn on oath says: That she is the plaintiff and administratrix named in the above-entitled action; that she has read the foregoing supplemental complaint, knows the contents thereof and believes the same to be true.

ANNA F. FRESCOLN.

Subscribed and sworn to before me this 7th day of December, 1914.

THOS. H. BAIN,
Notary Public for the State of Washington, Residing at Seattle. [20]

**Defendant's Exhibit "E" to Answer—Answer to
Supplemental Complaint in Frescoln vs. P. S. T.
L. & P. Co. in Superior Court.**

*In the Superior Court of the State of Washington
for King County.*

No. 99,677.

ANNA F. FRESCOLN, Individually and as the Ad-
ministratrix of the Estate of J. W. FRES-
COLN, Deceased,

Plaintiff,

PUGET SOUND TRACTION, LIGHT & POWER
COMPANY, a Corporation,

Defendant.

Comes now the defendant and for answer to the
Supplemental Complaint of the plaintiff filed herein,
shows:

I.

For answer to the second paragraph of the Sup-
plemental Complaint, the defendant denies the same.

II.

For answer to the third paragraph of the Supple-
mental Complaint, the defendant denies the same,
and especially denies that the said J. W. Frescoln
up to the time of his death was damaged in the sum
of twenty thousand dollars (\$20,000), or in any other
sum or at all, and further the defendant denies each
and every other allegation of said paragraph III.

III.

For answer to the fourth paragraph of the Supplemental Complaint the defendant denies the same.

IV.

For answer to the fifth paragraph of the Supplemental Complaint the defendant denies that the plaintiff has been damaged in the sum of twenty thousand six hundred and thirteen dollars (\$20,613), or in any other sum or at all. [21]

WHEREFORE the defendant prays that it may go hence with its costs.

JAMES B. HOWE,
H. S. ELLIOTT,
Attorneys for Defendant.

State of Washington,
County of King,—ss.

G. A. Richardson, being first duly sworn, on oath deposes and says: That he is the superintendent of railways of the Puget Sound Traction, Light & Power Company, a corporation, defendant in the within entitled action; that he has read the foregoing Answer, knows the contents thereof and believes the same to be true. That he makes this verification because said defendant is a corporation and affiant is its superintendent of railways.

G. A. RICHARDSON,

Subscribed and sworn to before me this 2d day of January, 1915.

R. G. SHARPE,
Notary Public in and for the State of Washington,
Residing at Seattle. [22]

**Defendant's Exhibit "F" to Answer—Judgment
Dismissing Action in Frescoln vs. P. S. T. L. &
P. Co. in Superior Court.**

*In the Superior Court of the State of Washington
for King County.*

No. 99,677.

ANNA F. FRESCOLN, Individually and as the Ad-
ministratrix of the Estate of J. W. FRES-
COLN, Deceased,

Plaintiff,

vs.

PUGET SOUND TRACTION, LIGHT & POWER
COMPANY, a Corporation,

Defendant.

**JUDGMENT DISMISSING ACTION THE VER-
DICT OF THE JURY NOTWITHSTAND-
ING.**

This cause having come regularly on for trial on March 17, 1915, the plaintiff appearing by her counsel Thomas H. Bain, and the defendant appearing by its counsel, H. S. Elliott, and a jury having been empaneled and the plaintiff and defendant respectively having presented their evidence, and the case having been submitted to the jury and thereafter on March 18, 1915, the jury having returned a verdict for the plaintiff for twenty-five hundred and fifty dollars (\$2,550), and before the entry of the judgment upon said verdict, the defendant having moved for judgment of dismissal notwithstanding the verdict, and the Court having ordered that

the entry of the judgment be held in abeyance until the Court's decision upon said motion; and said motion of the defendant for judgment notwithstanding the verdict having come regularly on for hearing on April 5, 1915, and both parties being represented by their respective counsel, and arguments of the respective counsel having been heard, and the Court being fully advised in the premises:

Now therefore, it is hereby ordered, adjudged and decreed that the verdict of the jury entered herein on March 18, 1915, be, and the same is, hereby set aside and held for naught, [23] and it is ordered and adjudged that the plaintiff take nothing by reason of her complaint herein and that the above-entitled action be, and the same is, hereby dismissed; and

It is further ordered, adjudged and decreed that the defendants do have and recover of and from the plaintiff its costs and disbursements herein.

Done in open court this 7th day of April, 1915.

O. K. as to form.

THOS. H. BAIN,

Attorney for Plaintiff.

Copy of within Answer received and services acknowledged this 7th day of July, 1915.

THOS. H. BAIN,

Attorney for Plaintiff.

[Indorsed]: Answer. Filed in the U. S. District Court, Western Dist. of Washington, Northern Division, July 7, 1915. Frank L. Crosby, Clerk. By E. M. L., Deputy. [24]

*In the District Court of the United States for the
Western District of Washington, Northern Di-
vision.*

No. 3033.

ANNA F. FRESCOLN,

Plaintiff,

vs.

PUGET SOUND TRACTION, LIGHT & POWER
COMPANY, a Corporation,

Defendant.

**Motion to Strike Second Affirmative Defense and
Plea in Bar, etc.**

Comes now the above-named plaintiff and moves the Court for an order to strike from the Answer of the defendant filed herein and every paragraph of the second Affirmative Defense and Plea in Bar and also exhibits "A," "B," "C," "D," "E" and "F" of said Answer, for the reason that all of said matter is irrelevant and has nothing to do with the action brought under the above title and for the further reason that the action referred to in said matter was brought and maintained under a different provision of the law and Statute of the State of Washington.

THOS. H. BAIN,

Attorney for Plaintiff.

State of Washington,
County of King,—ss.

Thos. H. Bain, being first duly sworn on oath says:
That he is the attorney for the plaintiff in the above-

entitled action; that he has read the foregoing motion to strike, knows the contents thereof and believes the same to be true, meritorious and well founded in law.

[Seal]

THOS. H. BAIN.

Subscribed and sworn to before me this 17th day of July, 1915.

CHAS. PETROVITSKY,

Notary Public for the State of Washington, Residing at Seattle. [25]

Service of the within Motion to Strike by delivery of a copy to the undersigned is hereby acknowledged this —— day of July, 1915.

H. S. ELLIOTT,

Attorney for Defendant.

[Indorsed]: Motion to Strike. Filed in the U. S. District Court, Western Dist. of Washington, Northern Division. July 17, 1915. Frank L. Crosby, Clerk. By E. M. L., Deputy. [26]

*United States District Court, Western District of
Washington, Northern Division.*

No. 3033.

ANNA F. FRESCOLN,

Plaintiff,

vs.

PUGET SOUND TRACTION, LIGHT & POWER
COMPANY, a Corporation,

Defendant.

Filed August 6, 1915.

**Opinion on Motion to Strike Affirmative Defense in
Frescoln vs. P. S. T. L. & P. Co.**

**ON MOTION TO STRIKE AFFIRMATIVE
DEFENSE—MOTION DENIED.**

THOMAS H. BAIN, for Plaintiff.

JAMES B. HOWE, for Defendant.

H. S. ELLIOTT, for Defendant.

NETERER, District Judge:

This is an action commenced by Anna F. Frescoln, widow of J. W. Frescoln, to recover \$25,000 for the death of her husband. It is alleged that on the 22d day of November, 1913, J. W. Frescoln was, through the careless and reckless operation of the street-car upon which he was a passenger, killed. The defendant has answered, setting forth certain affirmative defenses, one of which alleges, in substance, that on January 22, 1914, the deceased, J. W. Frescoln, had commenced an action in the Superior Court of King County against this defendant, for injuries received at the time and upon the facts and under the conditions set forth in the complaint of the plaintiff; that the issues in the said cause were made up and the cause set for trial on October 13, 1914; that on the 15th of September, 1914, the said J. W. Frescoln died; that thereafter, upon application, plaintiff was substituted in her own right and as administratrix; that she filed a supplementary complaint, to which the defendant answered, and on March 16, 1915, the cause came on for trial before a jury in the State court—that a verdict for plaintiff in the sum of \$2550 was returned;

but that upon motion, the [27] Court entered judgment for the defendant *non obstante veredicto*. The defendant prays that the plaintiff may not maintain this action until such time as such cause has been determined by the Supreme Court, where it is now pending on appeal. The various pleadings and orders in said action are attached to the answer as exhibits "A," "B," "C," "D," "E" and "F." The plaintiff has moved that these exhibits be stricken and that each paragraph of the said defense and plea in bar be stricken for the reason "that all of said matter is irrelevant and has nothing to do with the action brought under the above title, and for the further reason that the action referred to in said matter was brought and maintained under a different provision of the law and statute of the State of Washington."

An examination of the supplemental complaint filed in the state court proceeding shows that it was not a suit to recover for injuries suffered by her on account of her husband's death, but was a continuation of the action commenced by the husband for injuries to him, in which she was substituted as plaintiff in his stead for the benefit of herself and the estate, and sought to recover damages for the pain and suffering endured by the deceased up to the time of his death, medical expenses, etc., which proceeding was carried on under provisions of Section 194, Rem. & Bal. Code of Wash., which provides:

"No action for a personal injury to any person occasioning his death shall abate, nor shall such right of action determine, by reason of

such death, if he have a wife or child living, or leaving no wife or issue, if he have dependent upon him for support and resident within the United States at the time of his death, parents, sisters or minor brothers; but such action may be prosecuted, or commenced and prosecuted, in favor of such wife or in favor of the wife and children. * * * ”

The plaintiff in this case seeks to recover damages because of injuries sustained by her personally, such as loss of affection and companionship, and loss of support which would be occasioned by reason of her husband's death, and this action is based upon Section 183, Rem. & Bal. Wash. Code, which provides:

“ * * * When the death of a person is caused by the wrongful act or neglect of another, his heirs or [28] personal representatives may maintain an action for damages against the person causing the death. * * * ”

This proceeding and the proceeding referred to were unknown to the common law and can only be maintained by reason of the provisions of the statutes of Washington. On the death of a husband who had commenced an action to recover damages for injuries to himself, the cause may be continued by the widow and minor children upon being properly substituted as plaintiffs, *Swanson vs. Pacific Coast Shipping Co.*, 60 Wash. 87; and the substitution of the widow in such action does not preclude her from instituting an action on her own behalf to

recover damages which are peculiar to herself. Swanson v. Pacific Coast Shipping Co., *supra*; Thompson v. Seattle Ry. Co., 71 Wash. 436. The right of recovery in either case is predicated upon some act of omission or commission on the part of the defendant in the discharge of an imposed duty. As set forth in the answer, the judgment of the State court was that the act of the defendant did not cause the death upon which either action was predicated. If the adjudication of the State court could be *res adjudicata* in this action, then the motion must be denied. Can the plaintiff commence an action wherein she seeks to recover damages to herself based upon acts of negligence of the defendant which a competent court has already adjudicated do not exist? While the right of recovery in the instant case is not the same right of recovery as in the other case, each case is predicated upon and supported by the same facts. It would seem to be rather an anomalous situation if a party could predicate a right of recovery and have judgment awarded against him, and die, and his widow thereafter, upon allegations of negligence, institute a proceeding based upon the same act of negligence, and be permitted to litigate over the same facts. Suppose that the first case had been tried prior to the decease of J. W. Frescoln and a verdict returned in favor of the plaintiff and judgment entered *non obstante veredicto* for the defendant [29] and he had then died, could the plaintiff be permitted to prosecute this action now in the face of the former judgment? The plaintiff in this case does not occupy a different relation than if the

other case had been adjudicated prior to J. W. Frescoln's death. The Supreme Court of Virginia, in *Brammer's Adm'r v. Norfolk & W. Ry. Co.*, in passing upon the same issue that is here presented, and upon the same statutory authority in 57 S. E., at page 595, said:

“It would be an anomalous situation if the language used in our statute could be so construed that after a court of competent jurisdiction has ascertained, in a suit brought by a party himself, that the wrongful acts which constitute the sole foundation of any recovery against the defendant are not of actionable character, and that the injured person is not entitled to maintain an action by reason of them, or to recover damages on their account, other parties, in another and subsequent proceeding, may proceed to show, in an action for their benefit, founded upon the same alleged acts of the defendant, that at the time of the intestate's death, he was as a matter of fact, the judgment of the Court to the contrary notwithstanding, entitled to maintain an action against the defendant company and to recover damages for the very acts in respect of which recovery was denied the very man who suffered the injuries which resulted in his death.”

The Supreme Court of the United States, in *Southern Pacific Ry. Co. v. U. S.*, 168 U. S. 1, holds to the principle that a right, question or fact distinctly put in issue and directly determined by a court of competent jurisdiction as a ground of re-

covery cannot be disputed in a subsequent suit between the same parties or their privies. In that case the Court held that a former decision of the Court establishing the sufficiency of certain maps as to lands there in dispute was *res adjudicata* as to the sufficiency of such maps when the question was raised in the latter case, with reference to other lands in dispute, since the land in both suits had a common source of title, and the title depended upon the existence or nonexistence of the same state of facts.

Plaintiff's right of recovery in this case is based upon the assumption that the defendant was negligent. A competent [30] Court having adjudicated in favor of the defendant with relation to the negligent acts relied upon, the foundation of the plaintiff's right of recovery is removed, and until that judgment is reversed, the plaintiff's complaint can have no standing in this court.

The motion to strike is therefore denied.

JEREMIAH NETERER,

Judge.

[Indorsed]: Filed in the U. S. District Court, Western Dist. of Washington, Northern Division. Aug. 6, 1915. Frank L. Crosby, Clerk. By E. M. L., Deputy. [31]

*In the District Court of the United States for the
Western District of Washington, Northern Di-
vision.*

No. 3033.

ANNA F. FRESCOLN,

Plaintiff,

vs.

PUGET SOUND TRACTION, LIGHT & POWER
COMPANY, a Corporation,

Defendant.

Reply.

Comes now the plaintiff above named and for reply to the answer of the defendant herein alleges:

I.

Replying to the first special and affirmative defense of the defendant, plaintiff denies the same.

II.

For reply to paragraph I of second affirmative defense, plaintiff admits that on the 22d day of January, 1914, J. W. Frescoln commenced an action in the Superior Court of the State of Washington, King County, against the defendant, and denies all other allegations in said paragraph.

III.

Plaintiff herein admits the allegation in paragraphs II, III, IV, V, VI, VII and IX of said second affirmative defense.

IV.

Replying to paragraph VIII, plaintiff admits "the judgment of said Court on the 5th day of April, 1915,

was given as the final judgment." All other allegations in said paragraph are denied.

WHEREFORE, plaintiff demands judgment as prayed for in her petition filed herein.

THOS. H. BAIN,
Attorney for Plaintiff. [32]

State of Washington,
County of King,—ss.

Anna F. Frescoln, being first duly sworn, on oath says: That she is the plaintiff in the above-entitled action; that she has read the foregoing Reply, knows the contents thereof and believes the same to be true.

ANNA F. FRESCOLN.

Subscribed and sworn to before me this 26th day of October, 1915.

THOS. H. BAIN,
Notary Public for the State of Washington, Residing
at Seattle.

Service of the within Reply by delivery of a copy to the undersigned is hereby acknowledged this 27th day of Oct., 1915.

JAMES B. HOWE,
H. S. ELLIOTT,
Attorneys for Defendant.

[Indorsed]: Reply. Filed in the U. S. District Court, Western Dist. of Washington, Northern Division. Oct. 27, 1915. Frank L. Crosby, Clerk. By E. M. L., Deputy [33]

*In the District Court of the United States for the
Western District of Washington, Northern Di-
vision.*

No. 3033.

ANNA F. FRESCOLN,

Plaintiff,

vs.

PUGET SOUND TRACTION, LIGHT & POWER
COMPANY, a Corporation,

Defendant.

**Order Granting Leave to Plaintiff to Serve and File
Amended Reply.**

On motion of Thos. H. Bain, attorney for plaintiff in this action, notice thereof being duly served on the defendant's counsel, and after hearing thereon, it is hereby ordered that plaintiff have leave to serve and file an amended reply herein.

JEREMIAH NETERER,

Judge.

Service of the within Order by delivery of a copy to the undersigned is hereby acknowledged this 21st day of April, 1916.

JAMES B. HOWE and

H. S. ELLIOTT,

Attorneys for Defendant.

[Indorsed]: Order to File Amended Reply. Filed in the U. S. District Court, Western Dist. of Washington, Northern Division. Apr. 22, 1916. Frank L. Crosby, Clerk. By E. M. L., Deputy. [34]

*In the District Court of the United States for the
Western District of Washington, Northern Di-
vision.*

No. 3033.

ANNA F. FRESCOLN,

Plaintiff,

vs.

PUGET SOUND TRACTION, LIGHT & POWER
COMPANY, a Corporation,

Defendant.

Amended Reply.

Comes now the plaintiff above named, and by leave of the Court first had and obtained, files this her amended reply to the answer of the defendant herein and alleges:

I.

Replying to the first special and affirmative defense of the defendant, plaintiff denies the same.

II.

For reply to paragraph I of second affirmative defense, plaintiff admits that on the 22d day of January, 1914, J. W. Frescoln commenced an action in the Superior Court of the State of Washington, King County, against the defendant, and denies all other allegations in said paragraph.

III.

Plaintiff herein admits the allegations in paragraphs two, three, four, five, six, seven and nine of said second affirmative defense.

IV.

Replying to paragraph VIII, plaintiff admits "the judgment of said Court on the 5th day of April, 1915, was given as the final judgment." All other allegations in said paragraph are denied. [35]

V.

For other and further reply, plaintiff alleges that the appeal, referred to and alleged in paragraph IX of defendant's second affirmative defense was duly and regularly prosecuted in the Supreme Court of the State of Washington, and that on February 29, 1916, said Court handed down its opinion, as set forth in 47 Wash. Dec. 520, reversing the decision of the Superior Court and instructing said Court to enter a judgment upon the verdict and that the remittitur was sent down and filed April 12, 1916, in the Superior Court of King County, Washington, and on April 15, 1916, judgment according to the verdict of the jury was signed by the Court and duly filed a copy of which judgment is hereby attached, marked exhibit "A" and made a part hereof, as though fully set forth herein.

Wherefore, the plaintiff prays that she may have and maintain her action herein against the defendant and that said cause be set down for hearing and that in consideration of the premises, she be granted judgment upon the pleadings and that a jury be called to assess the amount of the damages, to be paid the plaintiff by the defendant.

THOS. H. BAIN,
Attorney for Plaintiff.

State of Washington,
County of King,—ss.

Anna F. Frescoln being first duly sworn on oath, says: That she is the plaintiff in the above-entitled action; that she has read the foregoing Amended Reply, knows the contents thereof and believes the same to be true.

ANNA F. FRESCOLN,

Subscribed and sworn to before me this 19th day of April, 1916. [36]

THOS. H. BAIN,

Notary Public for the State of Washington, Residing at Seattle.

Exhibit "A" to Amended Reply.

*In the Superior Court of the State of Washington
for King County.*

No. 99,677.

ANNA F. FRESCOLN, Individually, and as Administratrix of the Estate of J. W. FRESCOLN, Deceased,

Plaintiff,

vs.

PUGET SOUND TRACTION, LIGHT & POWER
COMPANY, a Corporation,

Defendant.

JUDGMENT ACCORDING TO THE VERDICT
OF THE JURY.

This cause having come regularly on for trial on March 17, 1915, the plaintiff appearing by her

counsel, Thos. H. Bain, and the defendant appearing by its counsel, H. S. Elliott, and a jury having been empaneled and the plaintiff and defendant respectively having presented their evidence, and cause having been submitted to the jury, and thereafter on March 18, 1915, the jury having returned a verdict for the plaintiff for the sum of twenty-five hundred (\$2500) dollars, and the defendant having moved for judgment of dismissal notwithstanding the verdict, and said motion having come regularly on for hearing on April 5, 1915, and arguments of counsel having been heard and said motion submitted to the Court, and the Court having sustained said motion and order and decreed that the verdict of the jury be set aside and held for naught and dismissed said entitled action, and gave judgment that defendant recover from plaintiff its costs and disbursements; and the plaintiff having duly and regularly appealed from said decision to the Supreme Court of the State of Washington, and said Court having on February 29, 1916, handed down its opinion reversing said decision of this Court with instructions to enter judgment upon the Verdict, and the remittitur having been sent down and filed in this court on April 12, 1916, with costs of the Supreme Court taxed at ninety-five and 30/100 (\$95.30) dollars and the Court being fully advised in the premises;

Now therefore it is hereby ordered, adjudged and decreed that said plaintiff do have and recover of and from said defendant, the Puget Sound Traction, Light & Power Company, a corporation, the sum of

twenty-five hundred (\$2,500) dollars with interest thereon at the rate of six (6) per cent per annum from the date hereof until paid, together with ninety-five and 30/100 (\$95.30) dollars, costs of the Supreme Court and for plaintiff's costs and disbursements incurred in this action in this court to be taxed, and let execution issue.

Done in open court this 15th day of April, 1916.

KING DYKEMAN,
Judge.

EXHIBIT "A."

Service of the within Amended Reply by delivery of a copy to the undersigned is hereby acknowledged this 21st day of April, 1916.

JAMES B. HOWE and
H. S. ELLIOTT,
Attorneys for Defendant. [37]

[Endorsed]: Amended Reply. Filed in the U. S. District Court, Western Dist. of Washington, Northern Division. Apr. 24, 1916. Frank L. Crosby, Clerk. By Ed M. Lakin, Deputy. [38]

*In the District Court of the United States for
the Western District of Washington, Northern
Division.*

No. 3033.

ANNA F. FRESCOLN,

Plaintiff,

vs.

PUGET SOUND TRACTION, LIGHT & POWER
COMPANY, a Corporation,

Defendant.

Verdict.

We, the jury in the above-entitled cause, find for the plaintiff, and assess her damages in the sum of \$4,500, four thousand five hundred dollars.

CHAS. McALISTER,

Foreman.

[Indorsed]: Verdict. Filed in the U. S. District Court, Western Dist. of Washington. June 30, 1916. Frank L. Crosby, Clerk. By Ed M. Lakin, Deputy.
[39]

*In the District Court of the United States for
the Western District of Washington, Northern
Division.*

No. 3033.

ANNA F. FRESCOLN,

Plaintiff,

vs.

PUGET SOUND TRACTION, LIGHT & POWER
COMPANY, a Corporation,

Defendant.

Decree.

This cause coming on duly and regularly for trial on the 28th day of June, 1916; plaintiff appearing in person, and by her attorney, Thomas H. Bain, and defendant, the Puget Sound Traction, Light & Power Company, a Corporation, appearing by its attorney, H. S. Elliott.

A jury of twelve men were regularly impaneled and sworn to try said action; witnesses on the part

of plaintiff were sworn and examined; after having heard the evidence and instructions of the Court, and arguments of counsel, the jury retired to consider its verdict, and subsequently returned into court, and being called, answered their names and says:

That they find a verdict for the plaintiff in the sum of four thousand five hundred (\$4,500) dollars and costs in this action.

Wherefore, by virtue of the law, and by reason of the premises aforesaid:

It is considered, ordered, adjudged and decreed, that said plaintiff have and recover of and from said defendant, the Puget Sound Traction, Light & Power Company, a corporation, the sum of \$4,500 with interest thereon at the rate of six (6%) [40] per cent per annum from the date hereof, until paid, together with plaintiff's costs and disbursements incurred in this action to be taxed, and that execution issue, to all of which debt. excepts and same is noted.

Done in open court this 10th day of July, A. D. 1916.

JEREMIAH NETERER,

Judge.

Service of the within Decree by delivery of a copy to the undersigned is hereby acknowledged this 3d day of July, 1916, to be presented July 10, 1916.

JAMES B. HOWE and

H. S. ELLIOTT,

Attorneys for Defendant.

[Indorsed]: Decree. Filed in the U. S. District Court, Western Dist. of Washington, Northern Divi-

sion. July 10, 1916. Frank L. Crosby, Clerk. By
Ed M. Lakin, Deputy. '[41]

*In the District Court of the United States for
the Western District of Washington, Northern
Division.*

No. 3033.

ANNA F. FRESCOLN,

Plaintiff,

vs.

PUGET SOUND TRACTION, LIGHT & POWER
COMPANY, a Corporation,

Defendant.

Petition for a New Trial.

To the Honorable JEREMIAH NETERER, Judge
of Said Court:

The defendant Puget Sound Traction, Light &
Power Company appearing by its counsel, H. S.
Elliott, petitions this Honorable Court for a new
trial in the above-entitled cause for the following
causes materially affecting the substantial rights of
the defendant:

I.

Insufficiency of the evidence to justify the verdict.

II.

Errors in law occurring at the trial.

SPECIFICATION I.

In support of the first of the above causes, namely,
insufficiency of the evidence to justify the verdict,
the defendant specifies the following pleadings, being

the only pleadings served and filed in the above-entitled action, namely, plaintiff's complaint, defendant's answer, and exhibits attached thereto; plaintiff's reply, and plaintiff's amended reply, and exhibits attached thereto, the same being all of the pleadings in said cause in which no amendments were made during the trial thereof and in support of which all of the evidence offered or introduced during the trial was limited. The defendant further specifies that the testimony given under said pleadings disclosed the fact that J. W. Frescoln, for whose [42] death the plaintiff in this action sought to recover damages, had in his lifetime instituted an action in the Superior Court for King County, State of Washington, to recover damages for the personal injuries sustained by said J. W. Frescoln, which it is claimed in this action resulted in his death and that upon the death of said J. W. Frescoln said former action had been revived and prosecuted by Anna F. Frescoln, individually, and as the administrator of the estate of J. W. Frescoln, deceased, and that in said action the said substituted plaintiff had prior to the trial of this action recovered a judgment against the defendant in the sum of two thousand five hundred dollars (\$2,500), which judgment had been paid and satisfied by the defendant, and that when said parties were substituted as party plaintiff therein, they filed in said prior action a supplemental complaint setting forth the death of said J. W. Frescoln, and that under the statutes of the State of Washington, if a person sustains a personal injury resulting in his death and prior to his

death institutes an action to recover damages for said personal injuries and subsequent to his death such action is revived and prosecuted to judgment by the widow or other representatives of said deceased person, and said judgment is satisfied by the defendant, said judgment is a bar to an action by the said widow or other heirs, or the personal representatives of the deceased person.

SPECIFICATION II.

In support of the second cause for a new trial, errors in law occurring at the trial, this defendant assigns three separate errors occurring at the trial and on account of which errors a new trial is requested.

I.

Error because the Court refused to sustain the objections of the defendant made after the jury was impaneled and sworn, and [43] before any testimony had been introduced; to the introduction of any testimony in the cause, for the reason that it was admitted by the pleadings that J. W. Frescoln, for whose death the plaintiff in this action is seeking to recover damages, had in his lifetime instituted an action in the Superior Court for King County, State of Washington, to recover damages for the personal injuries sustained by said J. W. Frescoln (and that afterward and before trial of said cause, said J. W. Frescoln died) and that upon the death of said J. W. Frescoln, said action had been revived and prosecuted by order of the Court in the name of Anna F. Frescoln, individually and as administratrix of the estate of said J. W. Frescoln, deceased, and that in

said action the said substituted plaintiff had prior to the commencement of this action recovered a judgment against the defendant in the sum of two thousand five hundred dollars (\$2,500), which said judgment had been paid and satisfied by the defendant, and that when Anna F. Frescoln, individually and as administratrix of the estate of J. W. Frescoln, deceased, was substituted as party plaintiff therein, said substituted plaintiff filed in said prior action a supplemental complaint setting forth the death of said J. W. Frescoln and that under the statutes of the State of Washington, if a person sustains a personal injury resulting in his death, and prior to his death institutes an action to recover damages for said personal injuries and subsequent to his death said action is revived and prosecuted to judgment by the substituted parties of said deceased person and said judgment is satisfied by the defendant, said judgment is a bar to the action by said widow or any other heirs or the personal representatives of the deceased to recover damages for the death of said deceased person.

In furtherance of this motion, the defendant further specifies the pleadings and the exhibits attached to and made a part [44] of the pleadings in the above-entitled action in support of this, its first allegation of error in law occurring at the trial.

II.

Because the Court refused to sustain the motion of the defendant, made after the jury was impaneled and sworn and before any testimony had been introduced, for judgment for the defendant on the plead-

ings, for the reason that it was admitted by the pleadings sought to recover damages had in his lifetime instituted an action in the Superior Court for King County, State of Washington, to recover damages for the personal injuries sustained by said J. W. Frescoln which it is claimed in this action resulted in his death and that upon the death of said J. W. Frescoln said former action had been revived and prosecuted by Anna F. Frescoln, individually and as the administratrix of the estate of J. W. Frescoln, deceased, and that in said action the said substituted plaintiff had prior to the trial of this action recovered a judgment against the defendant in the sum of two thousand five hundred dollars (\$2,500), which judgment had been paid and satisfied by the defendant and that when said parties were substituted as party plaintiff therein they filed in said prior action a supplemental complaint setting forth the death of said J. W. Frescoln, and that under the statutes of the State of Washington, if a person sustains a personal injury resulting in his death and prior to his death institutes an action to recover damages for said personal injuries and subsequent to his death said action is revived and prosecuted to judgment by the widow or other representatives of said deceased person and said judgment is satisfied by the defendant said judgment is a bar to an action by the said widow, or any other heirs or the personal representative of the deceased to recover damages for the death of said deceased person. Said objection and motion of the defendant. [45] was denied and overruled by the Court and to the denial thereof the defendant

duly excepted and its exception was allowed. The defendant submits the pleadings and the exhibits attached to and made a part of said pleadings in the above-entitled action in support of this its second allegation of error in law occurring at the trial.

III.

Because the Court refused to grant the motion of the defendant, made in writing, to instruct the jury to return a verdict for the defendant, this motion having been made after the jury had been duly impaneled and sworn and after the plaintiff had submitted all of her evidence and the defendant had submitted all of its evidence and before the jury retired to consider of its verdict (no evidence having been offered or introduced at said trial, either by plaintiff or defendant, except in support of the issues raised by the pleadings herein). This defendant further specified as ground for this particular error, the allegations in its first and second allegations of the error in law occurring at the trial as above set forth.

JAMES B. HOWE,

H. S. ELLIOTT,

Attorneys for Defendant.

Copy of the within Petition for New Trial received and service of the same acknowledged this 10th day of August, 1916.

THOS. H. BAIN,

Attorney for Plaintiff.

[Indorsed]: Petition for a New Trial. Filed in the U. S. District Court, Western Dist. of Washington,

Northern Division. Aug. 11, 1916. Frank L. Crosby,
Clerk. [46]

*In the District Court of the United States for
the Western District of Washington, Northern
Division.*

No. 3033.

ANNA F. FRESCOLN,

Plaintiff,

vs.

PUGET SOUND TRACTION, LIGHT & POWER
COMPANY, a Corporation,

Defendant.

Order Denying Petition for New Trial.

This matter coming on to be heard upon the petition for a new trial, filed by the defendant herein, and said petition being examined by the Court, and the Court being duly advised, it is ordered that the Petition for a new trial in this action be, and the same is hereby, denied to all of which defendant excepts, which exception is hereby allowed.

Done in open court this 21st day of September,
A. D. 1916.

JEREMIAH NETERER,

Judge.

O. K.—J. B. HOWE and

H. S. ELLIOTT,

Attys. for Dft.

[Indorsed]: Order Denying Petition for New Trial.
Filed in the U. S. District Court, Western Dist. of

Washington, Northern Division. Sept. 21, 1916.
Frank L. Crosby, Clerk. By Ed M. Lakin, Deputy.
[47]

*In the District Court of the United States for
the Western District of Washington, Northern
Division.*

No. 3033.

ANNA F. FRESCOLN,

Plaintiff,

vs.

PUGET SOUND TRACTION, LIGHT & POWER
COMPANY, a Corporation,

Defendant.

Bill of Exceptions.

FIRST EXCEPTION.

BE IT REMEMBERED, That in the trial of this cause on the 28th day of June, 1916, before the Honorable Jeremiah Neterer, both parties appearing by counsel, the jury was duly impaneled and sworn, and thereafter and before any evidence was introduced, either by the plaintiff or by the defendant, the defendant by its counsel, H. S. Elliott, objected to the introduction of any testimony in the case for the reason that it was admitted by the pleadings that J. W. Frescoln for whose death the plaintiff in this action is seeking to recover damages, had in his lifetime instituted an action in the Superior Court for King County, State of Washington, to recover damages for the personal injuries sustained by said

J. W. Frescoln (and that afterwards and before trial of said case said J. W. Frescoln died), and that upon the death of said J. W. Frescoln said action had been revived and prosecuted by order of the court in the name of Anna F. Frescoln individually and as the administratrix of the estate of J. W. Frescoln, deceased, and that in said action the said substituted plaintiff had prior to the commencement of this action recovered a judgment against the defendant in the sum of two thousand five hundred dollars (\$2,500), which judgment had been paid and satisfied by the defendant and that when Anna F. Frescoln, individually and as administratrix of the estate of J. W. Frescoln, [48] deceased, was substituted as party plaintiff therein, said substituted plaintiff filed in said prior action a supplemental complaint setting forth the death of said J. W. Frescoln, and that under the statutes of the State of Washington if a person sustains a personal injury resulting in his death and prior to his death institutes an action to recover damages for said personal injuries and subsequent to his death said action is revived and prosecuted to judgment by the substituted parties of said deceased person and said judgment is satisfied by the defendant said judgment is a bar to an action by the said widow, or any other heirs or the personal representative of the deceased to recover damages for the death of said deceased person. Said objection and motion of the defendant was denied and overruled by the Court and to the denial thereof the defendant duly excepted and its exception was al-

lowed. The defendant submits the pleadings and the exhibits attached to and made a part of said pleadings in the above-entitled action in support of this its First Exception.

That the only pleadings served and filed in the above-entitled action were the following Plaintiff's Complaint, Defendant's Answer and exhibits thereto attached, Plaintiff's Reply, Plaintiff's Amended Reply and exhibits thereto attached. That no trial amendments to the pleadings herein were proposed by either party and that no evidence was offered or introduced during the trial of said cause by either plaintiff or defendant except in support of the issues raised by the pleadings herein.

SECOND EXCEPTION.

In the trial of this cause on the 28th day of June, 1916, before the Honorable Jeremiah Neterer, both parties appearing by counsel, the jury was duly empaneled and sworn, and thereafter [49] and before any evidence was introduced either by the plaintiff or the defendant, the defendant by its counsel, H. S. Elliott, moved the Court for judgment for the defendant on the pleadings for the reason that it was admitted by the pleadings that J. W. Frescoln for whose death the plaintiff in this action sought to recover damages had in his lifetime instituted an action in the Superior Court for King County, State of Washington, to recover damages for the personal injuries sustained by said J. W. Frescoln, which it is claimed in this action resulted in his death, and that upon the death of said J. W. Frescoln said former action had been revived and

prosecuted by Anna F. Frescoln, individually and as the administratrix of the estate of J. W. Frescoln, deceased, and that in said action the said substituted plaintiff had prior to the trial of this action recovered a judgment against the defendant in the sum of two thousand five hundred dollars (\$2,500), which judgment had been paid and satisfied by the defendant and that when said parties were substituted as party plaintiff therein they filed in said prior action a supplemental complaint setting forth the death of said J. W. Frescoln, and that under the statutes of the State of Washington if a person sustains a personal injury resulting in his death and prior to his death institutes an action to recover damages for said personal injuries and subsequent to his death said action is revived and prosecuted to judgment by the widow or other representatives of said deceased person and said judgment is satisfied by the defendant said judgment is a bar to an action by the said widow, or any other heirs or the personal representative of the deceased to recover damages for the death of said deceased person. Said objection and motion of the defendant was denied [50] and overruled by the Court and to the denial thereof the defendant duly excepted and its exception was allowed. The defendant submits the pleadings and the exhibits attached to and made a part of said pleadings in the above-entitled action in support of this its Second Exception.

That the only pleadings served and filed in the above-entitled action were the following Plaintiff's Complaint, Defendant's Answer and exhibits thereto

attached, Plaintiff's Reply, and Plaintiff's Amended Reply and exhibits thereto attached. That no trial amendments to the pleadings herein were proposed by either party and that no evidence was offered or introduced during the trial of said cause by either plaintiff or defendant, except in support of the issues raised by the pleadings herein.

THIRD EXCEPTION.

In the trial of the above-entitled action on June 28, 1916, before the Honorable Jeremiah Neterer and after the jury was duly impaneled and sworn, and after the plaintiff had submitted all of her evidence and the defendant had submitted all of its evidence, and before the jury retired to consider of its verdict (no evidence having been offered or introduced at said trial, either by plaintiff or defendant, except in support of the issues raised by the pleadings herein) the defendant in writing moved the Court to instruct the jury to return a verdict for the defendant. Such request and motion of the defendant was denied by the Court and to the denial thereof the defendant duly excepted and its exception was allowed. [51]

*In the District Court of the United States for
the Western District of Washington, Northern
Division.*

No. 3033.

ANNA F. FRESCOLN,

Plaintiff,

vs.

PUGET SOUND TRACTION, LIGHT & POWER
COMPANY, a Corporation,

Defendant.

Order Allowing Bill of Exceptions.

The above-named defendant having on July 7, 1916, duly served upon the attorneys for the plaintiff a proposed bill of exceptions and the attorneys for the plaintiff having on July 13, 1916, duly served upon the attorneys for defendant proposed amendments to the bill of exceptions proposed by defendant, and the said proposed bill of exceptions together with the amendments thereto proposed by the plaintiff having been delivered on July 17, 1916, by the attorneys for the defendant to the clerk of the above-entitled court for the Judge thereof, and the clerk having thereafter delivered said proposed bill of exceptions and amendments to the Judge of the above-entitled court, and the Judge having designated Monday, July 24, 1916, at the hour of 10 o'clock A. M. as the time at which he would settle the bill of exceptions, and said hearing having been, with the consent of counsel, continued until Monday, July 31, 1916, at the hour of 10 o'clock A. M.

and at said time plaintiff being represented by her attorney, Thomas H. Bain, Esq., and the defendant being represented by counsel and both parties having consented to the settling of the foregoing bill of exceptions, and the said foregoing bill of exceptions conforming to the truth and being in proper form;

Now, therefore, I the undersigned Judge of the above-entitled court and the Judge who tried the above-entitled action, hereby certify that the above and foregoing bill is [52] a true bill of exceptions, and the same is hereby approved, allowed and settled, and ordered filed and made a part of the record in the above-entitled cause.

Done in open court this 31st day of July, 1916.

JEREMIAH NETERER,

Judge.

O. K.

THOS. H. BAIN,

Attorney for Plaintiff.

[Indorsed]: Bill of Exceptions and Order Allowing Bill of Exceptions. Filed in the U. S. District Court, Western Dist. of Washington. July 31, 1916. Frank L. Crosby, Clerk. By Ed M. Lakin, Deputy.
[53]

*In the District Court of the United States for
the Western District of Washington, Northern
Division.*

No. 3033.

ANNA F. FRESCOLN,

Plaintiff,

vs.

PUGET SOUND TRACTION, LIGHT & POWER
COMPANY, a Corporation,

Defendant.

Assignment of Errors.

Now comes the Puget Sound Traction, Light & Power Company, a corporation, the defendant above named, in connection with its petition for writ of error herein makes the following assignment of errors and particularly specified the following as the errors upon which it will rely and which it will urge upon the prosecution of its said writ of error in the above cause, and which it avers occurred upon the trial of said cause, to wit:

I.

The Court erred in rendering judgment in favor of the plaintiff and against the defendant.

II.

The Court erred in refusing to sustain the objections of the defendant made after the jury was impaneled and sworn, and before any testimony had been introduced common to the introduction of any testimony in the cause.

III.

The Court erred in refusing to instruct the jury to return a verdict in favor of the defendant.

IV.

The Court erred in overruling the defendant's motion for a new trial. [54]

WHEREFORE, Said Puget Sound Traction, Light & Power Company, plaintiff in error, prays that said judgment of the District Court of the United States for the Western District of Washington, Northern Division, be reversed, and that said Court be instructed to grant a new trial of said cause.

JAMES B. HOWE,

H. S. ELLIOTT,

Attorneys for Defendant.

[Indorsed]: Assignment of Errors. Filed in the U. S. District Court, Western Dist. of Washington, Northern Division. Nov. 3, 1916. Frank L. Crosby, Clerk. By Ed. M. Lakin, Deputy. [55]

*In the District Court of the United States for
the Western District of Washington, Northern
Division.*

No. 3033.

ANNA F. FRESCOLN,

Plaintiff,

vs.

PUGET SOUND TRACTION, LIGHT & POWER
COMPANY, a Corporation,

Defendant.

Petition for Writ of Error.

Now comes the Puget Sound Traction, Light & Power Company, a corporation, defendant herein, and says: That on the 10th day of July, 1916, this Court entered judgment herein in favor of the plaintiff above named and against the defendant above named, and thereafter on the 5th day of September, 1916, this Court denied a motion for a new trial theretofore regularly made, and this Court having further on the 21st day of September, 1916, signed and filed an order denying the petition for a new trial, in which judgment and the proceedings had prior thereto in this cause certain errors were committed to the prejudice of this defendant, all of which will appear in detail from the assignment of errors which is filed with this petition.

WHEREFORE this defendant prays that a writ of error issue in its behalf out of the United States Circuit Court of Appeals for the Ninth Circuit for the correction of errors so complained of, and that a transcript of the record of the proceedings and all things concerning the same, duly authenticated, be sent to the United States Circuit Court of Appeals for the Ninth Circuit.

JAMES B. HOWE,
H. S. ELLIOTT,
Attorneys for Defendant.

[Indorsed]: Petition for Writ of Error. Filed in the U. S. District Court, Western Dist. of Washington, Northern Division. Nov. 3, 1916. Frank L. Crosby, Clerk. By Ed M. Lakin, Deputy. [56]

*In the District Court of the United States for
the Western District of Washington, Northern
Division.*

No. 3033.

ANNA F. FRESCOLN,

Plaintiff,

vs.

PUGET SOUND TRACTION, LIGHT & POWER
COMPANY, a Corporation,

Defendant.

Order Allowing Writ of Error.

On this 3d day of November, 1916, came the defendant, Puget Sound Traction, Light & Power Company, a corporation, by its attorneys, and filed herein and presented to the Court its petition praying for the allowance of a writ of error and an assignment of errors intended to be urged by it, praying also that a transcript of the record and proceedings in said cause, with all things concerning the same, be sent to the United States Circuit Court of Appeals for the Ninth Circuit.

On consideration whereof, the Court does hereby allow the writ of error prayed for. It is further ordered that a bond, in the sum of eleven thousand dollars (\$11,000), conditioned according to the law, be executed in behalf of the above-named defendant, with good and sufficient surety, to be approved by the undersigned, and that upon said bond being executed, approved and filed, the said judgment in this cause shall forthwith be superseded and all proceed-

ings in this cause stayed until the final determination of said writ of error by the United States Circuit Court of Appeals for the Ninth Circuit.

Dated this 3d day of November, 1916.

JEREMIAH NETERER,

District Judge of the United States, for the Western District of Washington, presiding in said Circuit.

[Indorsed]: Order Allowing Writ of Error. Filed in the U. S. District Court, Western Dist. of Washington, Northern Division. Nov. 3, 1916. Frank L. Crosby, Clerk. By Ed M. Lakin, Deputy. [57]

In the District Court of the United States for the Western District of Washington, Northern Division.

No. 3033.

ANNA F. FRESCOLN,

Plaintiff,

vs.

PUGET SOUND TRACTION, LIGHT & POWER
COMPANY, a Corporation,

Defendant.

Bond on Writ of Error.

KNOW ALL MEN BY THESE PRESENTS,
That we, Puget Sound Traction, Light & Power Company, a corporation, defendant above named, as principal, and the Massachusetts Bonding & Insurance Company, a corporation duly organized and existing under and by virtue of the laws of the State of Mass-

achusetts, and duly authorized to become surety upon bonds and to transact business as a surety company in the State of Washington, as surety, are held and firmly bound unto Anna F. Frescoln, plaintiff above named, in the sum of eleven thousand dollars (\$11,000), lawful money of the United States, to be paid to said Anna F. Frescoln, her heirs, executors, administrators and assigns, for which payment well and truly to be made, we do hereby bind ourselves, our and each of our successors and assigns, jointly and severally, firmly by these presents.

Sealed with our seals, and dated this 3d day of November, A. D. 1916.

Whereas, lately, at the regular term of the District Court of the United States for the Western District of Washington, Northern Division, in a suit pending in said court between Anna F. Frescoln, plaintiff, and Puget Sound Traction, Light & Power Company, a corporation, defendant, a judgment was rendered in favor of said plaintiff and against said defendant in the sum of [58] four thousand five hundred dollars (\$4,500) and costs, and the said Puget Sound Traction, Light & Power Company having obtained a writ of error and filed a copy thereof in the office of the clerk of said court to reverse the judgment in the aforesaid suit, and a citation directed to the said Anna F. Frescoln, plaintiff as aforesaid, citing and admonishing her to be and appear at a session of the United States Circuit Court of Appeals for the Ninth Circuit to be holden at the city of San Francisco, State of California, in said circuit; Now, therefore, the condition of the above obligation

is such that if the said Puget Sound Traction, Light & Power Company shall prosecute its writ of error to effect and shall answer all costs and damages that may be awarded against it including all just damages for delay and costs and interest on the appeal, if it shall fail to make its plea good, then the above obligation shall be void, otherwise to remain in full force and effect.

It is hereby expressly agreed by said surety that in case of a breach of any condition hereof, the above-named District Court of the United States for the Western District of Washington, Northern Division, may, upon notice to said surety of not less than ten (10) days, proceed summarily in the above-entitled action to ascertain the amount which said surety is bound to pay on account of such breach, and render judgment therefor against said surety, and award execution therefor.

PUGET SOUND TRACTION, LIGHT &
POWER COMPANY,

By A. L. KEMPSTER,
Manager.

[Seal] Attest: JAMES B. HOWE,
Secretary.

MASSACHUSETTS BONDING AND IN-
SURANCE COMPANY,

[Seal] By FRED B. POTWIN,
Attorney in Fact. [59]

The foregoing bond is hereby approved as a bond on writ of error and supersedeas bond, this 3d day of November, 1916.

JEREMIAH NETERER,

Judge of the District Court of the United States,
Presiding in the United States District Court
for the Western District of Washington,
Northern Division.

[Indorsed]: Bond on Writ of Error. Filed in the U. S. District Court, Western District of Washington, Northern Division, Nov. 3, 1916. Frank L. Crosby, Clerk. By Ed M. Lakin, Deputy. [60]

**Order Extending Time to January 1, 1917, to File
Record, etc.**

*In the District Court of the United States for the
Western District of Washington, Northern Division.*

No. 3033.

ANNA F. FRESCOLN,

Plaintiff,

vs.

PUGET SOUND TRACTION, LIGHT & POWER
COMPANY, a Corporation,

Defendant

Now, this 27th day of November, 1916, upon motion of counsel for defendant and for sufficient cause appearing, it is ordered that the time within which the clerk of this court may prepare, certify and transmit to the United States Circuit Court of Ap-

peals the transcript of the record in this cause be, and the same is hereby extended to and including the 1st day of January, 1917.

JEREMIAH NETERER,
District Judge.

[Indorsed]: Order Extending Time to File Transcript. Filed in the U. S. District Court, Western Dist. of Washington, Northern Division. November 27, 1916. Frank L. Crosby, Clerk. By Ed M. Lakin, Deputy. [61]

*In the District Court of the United States for
the Western District of Washington, Northern
Division.*

No. 3033.

ANNA F. FRESCOLN,

Plaintiff,

vs.

PUGET SOUND TRACTION, LIGHT & POWER
COMPANY, a Corporation,

Defendant.

Writ of Error.

The President of the United States of America, to the Honorable the Judges of the District Court of the United States, for the Western District of Washington, Northern Division, GREETING:

Because in the record and proceedings, as also in the rendition of the judgment upon a verdict which is in the said District Court before you, or some of

you, between Anna F. Frescoln, the original plaintiff and defendant in error, and Puget sound Traction, Light & Power Company, a corporation, the original defendant and plaintiff in error, manifest error hath happened to the damage of said Puget Sound Traction, Light & Power Company, plaintiff in error, as by its complaint appears, we being willing that error, if any hath been, should be duly corrected and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then, under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the United States Circuit Court of Appeals for the Ninth Circuit, together with this writ, so that you have the same at San Francisco, California, in said circuit on the 3d day of December next; and that the records and proceedings aforesaid being inspected, the said Circuit Court of Appeals may cause further to be done therein to correct that error, which of right and according to law and custom of the United States ought to be done. [62]

Witness the Honorable EDWARD DOUGLAS WHITE, Chief Justice of the Supreme Court of the United States, the 3d day of November, in the year of our Lord one thousand nine hundred and sixteen.

[Seal]

FRANK L. CROSBY,

Clerk of the United States District Court for the Western District of Washington.

Copy of within Writ of Error received and service of the same acknowledged this 4th day of Nov. 1916.

THOS. H. BAIN,
Attorneys for Plaintiff.

[Indorsed]: Original. No. 3033. In the District Court of the United States, for the Western District of Washington, Northern Division. Anna F. Frescoln, Plaintiff, vs. Puget Sound Traction, Light & Power Company, a Corporation, Defendant, Writ of Error. Filed in the U. S. District Court, Western Dist. of Washington, Northern Division. Nov. 3, 1916. Frank L. Crosby, Clerk. By Ed M. Lakin, Deputy. [63]

*In the District Court of the United States for
the Western District of Washington, Northern
Division.*

No. 3033.

ANNA F. FRESCOLN,

Plaintiff,

vs.

PUGET SOUND TRACTION, LIGHT & POWER
COMPANY, a Corporation,

Defendant.

Citation on Writ of Error.

UNITED STATES OF AMERICA.

The President of the United States of America to
Anna F. Frescoln, GREETING:

You are cited and admonished to be and appear in the United States Circuit Court of Appeals for the Ninth Circuit, at the courtroom of said court, in the

city of San Francisco, in the State of California, within thirty (30) days after the date of this Citation, pursuant to writ of error filed in the clerk's office of the District Court of the United States, for the Western District of Washington Northern Division, wherein Puget Sound Traction, Light & Power Company is plaintiff in error and you are defendant in error, to show cause, if any there be, why the judgment in the said writ of error mentioned should not be corrected and speedy justice should not be done to the parties in that behalf.

Witness the Honorable EDWARD DOUGLAS WHITE, Chief Justice of the Supreme Court of the United States, the 3d day of November, in the year of our Lord one thousand nine hundred and sixteen.

[Seal]

JEREMIAH NETERER,

Judge of the District Court of the United States,
Presiding in the District Court of the United
States for the Western District of Washington,
Northern Division. [64]

Copy of within Citation on Writ of Error received
and service of the same acknowledged this 4th day
of Nov., 1916.

THOS. H. BAIN,
Attorney for Plaintiff.

[Indorsed]: (Original.) No. 3033. In the District Court of the United States for the Western District of Washington, Northern Division. Anna F. Frescoln, Plaintiff, vs. Puget Sound Traction, Light & Power Company, a Corporation, Defendant. Citation on Writ of Error. Filed in the U. S. Dis-

trict Court, Western Dist. of Washington, Northern Division, Nov. 3, 1916. Frank L. Crosby, Clerk. By Ed M. Lakin, Deputy. James B. Howe and H. S. Elliott. P. O. and Office Address, Room 403, Electric Building, 7th Ave. and Olive Street, Seattle, Wash., Attorneys for Defendant.[65]

*In the District Court of the United States for the
Western District of Washington, Northern
Division.*

No. 3033.

PUGET SOUND TRACTION, LIGHT & POWER
Company, a Corporation,

Plaintiff in Error,

vs.

ANNA F. FRESCOLN,

Defendant in Error.

Praeceptum for Transcript of Record.

To the Clerk of the Above-entitled Court:

You will please prepare, certify and forward, as provided by law, to the United States Circuit Court of Appeals for the Ninth Circuit as the record on writ of error, to the District Court of the United States for the Western District of Washington, Northern Division, a complete transcript of the following files, records and proceedings in the above-entitled cause to wit:

Complaint.

Answer.

Motion to Strike Affirmative Defense.

Order Denying Motion to Strike Affirmative Defense.

Reply.

Order Permitting Filing of Amended Reply.

Amended Reply.

Verdict.

Judgment.

Petition for New Trial.

Order Overruling Petition for New Trial.

Bill of Exceptions and Proof of Service Thereto
Attached. [66]

Assignment of Errors.

Petition for Writ of Error.

Order Allowing Writ of Error.

Bond on Writ of Error.

Order.

Original Writ of Error and Plaintiff's Admission of
Service.

Praecipe for Transcript of Record.

JAMES B. HOWE,

H. S. ELLIOTT,

Attorneys for Defendant.

We waive the provisions of the Act approved February 13, 1911, and direct that you forward typewritten transcript to the Circuit Court of Appeals for printing as provided under Rule 105 of this court.

JAMES B. HOWE,

H. S. ELLIOTT,

Attorneys for Defendant.

[Indorsed]: Praecipe for Transcript of Record.
Filed in the U. S. District Court, Western Dist. of
Washington, Northern Division. November 24,

70 *Puget Sound Traction etc. Company*

1916. Frank L. Crosby, Clerk. By Ed. M. Lakin,
Deputy. [67]

*In the District Court of the United States for the
Western District of Washington, Northern
Division.*

No. 3033.

ANNA F. FRESCOLN,

Plaintiff,

vs.

PUGET SOUND TRACTION, LIGHT & POWER
COMPANY, a Corporation,

Defendant.

**Certificate of Clerk U. S. District Court to
Transcript of Record.**

United States of America,
Western District of Washington,—ss.

I, Frank L. Crosby, Clerk of the United States District Court, for the Western District of Washington, do hereby certify the foregoing 67 typewritten pages numbered 1 to 67, inclusive, to be a full, true, correct and complete copy of so much of the record, papers, and other proceedings in the above and foregoing cause, as are necessary to the hearing of said cause on Writ of Error therein the United States Circuit Court of Appeals for the Ninth Circuit, and as is called for by counsel of record herein, as the same remain of record and on file in the office of the clerk of said District Court, and that the same constitute the record on return to said Writ of Error herein from the judgment of said United States

District Court for the Western District of Washington to the United States Circuit Court of Appeals for the Ninth Circuit. [68]

I further certify the following to be a full, true, and correct statement of all expenses, costs, fees and charges incurred and paid in my office by or on behalf of the defendant and plaintiff in error for making record, certificate or return to the United States Circuit Court of Appeals for the Ninth Circuit in the above-entitled cause, to wit:

Clerk's fee (Sec. 828 R. S. U. S.) for making record, certificate or re- turn, 145 folios at 15c.....	\$21.75
Certificate of Clerk to Transcript of Record—4 folios at 15c.....	.60
Seal to Said Certificate.....	.20
	<hr/>
Total,	\$22.55

I hereby certify that the above cost for preparing and certifying record amounting to \$22.55, has been paid to me by Messrs. James B. Howe, and H. S. Elliott, counsel for defendant and plaintiff in error.

I further certify that I hereto attach and herewith transmit the original Writ of Error and original Citation issued in this cause.

IN WITNESS WHEREOF I have hereto set my hand and affixed the seal of said District Court at Seattle, in said District, this 28th day of November, 1916.

[Seal]

FRANK L. CROSBY,
Clerk U. S. District Court. [69]

*In the District Court of the United States for the
Western District of Washington, Northern Di-
vision.*

No. 3033.

ANNA F. FRESCOLN,

Plaintiff,

vs.

PUGET SOUND TRACTION, LIGHT & POWER
COMPANY, a Corporation,

Defendant.

Writ of Error.

The President of the United States of America, to
the Honorable the Judges of the District Court
of the United States, for the Western District
of Washington, Northern Division, Greeting:

Because in the record and proceedings, as also in
the rendition of the judgment upon a verdict which
is in the said District Court before you, or some of
you, between Anna F. Frescoln, the original plain-
tiff and defendant in error, and Puget Sound Trac-
tion, Light & Power Company, a corporation, the
original defendant and plaintiff in error, manifest
error hath happened to the damage of said Puget
Sound Traction, Light & Power Company, plaintiff
in error, as by its complaint appears, we being will-
ing that error, if any hath been, should be duly cor-
rected and full and speedy justice done to the parties
aforesaid in this behalf, do command you, if judg-
ment be therein given, that then, under your seal,
distinctly and openly, you send the record and

proceedings aforesaid, with all things concerning the same, to the United States Circuit Court of Appeals for the Ninth Circuit, together with this writ, so that you have the same at San Francisco, California, in said circuit on the 3d day of December, next; and that the records and proceedings aforesaid being inspected, the said Circuit Court of Appeals may cause further [70] to be done therein to correct that error, which of right and according to law and custom of the United States ought to be done.

WITNESS the Honorable EDWARD DOUGLAS WHITE, Chief Justice of the Supreme Court of the United States, the 3d day of November, in the year of our Lord one thousand nine hundred and sixteen.

[Seal]

FRANK L. CROSBY,

Clerk of the United States District Court for the Western District of Washington.

_____,
Deputy.

Allowed by:

_____,
District Judge of the United States, Presiding in the District Court of the United States, for the Western District of Washington, Northern Division.

Dated November —, 1916.

Received this — day of November, 1916, a true

copy of the foregoing writ of error, for the defendant in error.

Clerk of the District Court of the United States for
the Western District of Washington, Northern
Division.

Deputy. [71]

[Endorsed]: Original. No. 3033. In the District Court of the United States for the Western District of Washington, Northern Division. Anna F. Frescoln, Plaintiff, vs. Puget Sound Traction, Light & Power Company, a Corporation, Defendant. Writ of Error. Filed in the U. S. District Court, Western Dist. of Washington, Northern Division. Nov. 3, 1916. Frank L. Crosby, Clerk. By Ed M. Lakin, Deputy.

Copy of within Writ of Error received and service of the same acknowledged this 4 day of Nov., 1916.

THOS. H. BAIN,
Attorney for Plaintiff,

To Whom it May Concern:

Notice is hereby given that service of all subsequent papers in the within named action except writs and process, may be made upon defendant by serving the same upon James B. Howe and H. S. Elliott as Attorneys for Defendant, at No. 403 Electric Building, Seattle Washington.

Attorneys for Defendant.

*In the District Court of the United States for the
Western District of Washington, Northern Di-
vision.*

No. 3033.

ANNA F. FRESCOLN,

Plaintiff,

vs.

PUGET SOUND TRACTION, LIGHT & POWER
COMPANY, a Corporation,

Defendant.

Citation on Writ of Error.

UNITED STATES OF AMERICA.

The President of the United States of America, to
Anna F. Frescoln, Greeting:

You are cited and admonished to be and appear
in the United States Circuit Court of Appeals for
the Ninth Circuit, at the courtroom of said court, in
the city of San Francisco, in the State of California,
within thirty (30) days after the date of this cita-
tion, pursuant to writ of error filed in the clerk's
office of the District Court of the United States, for
the Western District of Washington, Northern Di-
vision, wherein Puget Sound Traction, Light &
Power Company is plaintiff in error and you are
defendant in error, to show cause, of any there be,
why the judgment in the said writ of error mentioned
should not be corrected and speedy justice should not
be done to the parties in that behalf.

WITNESS the Honorable EDWARD DOUG-
LAS WHITE, Chief Justice of the Supreme Court

of the United States, the 3d day of November, in the
year of our Lord one thousand nine hundred and
sixteen.

[Seal] JEREMIAH NETERER,
Judge of the District Court of the United States,
Presiding in the District Court of the United
States for the Western District of Washington,
Northern Division. [73]

[Endorsed]: Original. No. 3033. In the District Court of the United States for the Western District of Washington, Northern Division. Anna F. Frescoln, Plaintiff, vs. Puget Sound Traction, Light & Power Company, a Corporation, Defendant. Citation on Writ of Error. Filed in the U. S. District Court, Western Dist. of Washington, Northern Division. Nov. 3, 1916. Frank L. Crosby, Clerk. By Ed M. Lakin, Deputy.

Copy of within Citation on Writ of Error received
and service of the same acknowledged this 4th day
of Nov., 1916.

THOS. H. BAIN,
Attorney for Plaintiff,
To Whom it May Concern:

Notice is hereby given that service of all subsequent papers in the within named action except writs and process, may be made upon defendant by serving the same upon James B. Howe and H. S. Elliott as Attorneys for Defendant, at No. 403 Electric Building, Seattle Washington.

_____,
_____,
Attorneys for Defendant.

[Endorsed]: No. 2887. United States Circuit Court of Appeals for the Ninth Circuit. Puget Sound Traction, Light & Power Company, a Corporation, Plaintiff in Error, vs. Anna F. Frescoln, Defendant in Error. Transcript of Record. Upon Writ of Error to the United States District Court of the Western District of Washington, Northern Division.

Filed November 29, 1916.

F. D. MONCKTON,

Clerk of the United States Circuit Court of Appeals
for the Ninth Circuit.

By Paul P. O'Brien,
Deputy Clerk.

